Human Rights

FORCED EVICTIONS AND HUMAN RIGHTS

Fact Sheet No. 25

World Campaign for Human Rights

The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include . . . poverty, hunger and other denials of economic, social and cultural rights . . .

VIENNA DECLARATION AND PROGRAMME OF ACTION*

(Part I, para. 30)

* Adopted by the World Conference on Human Rights, Vienna, 23 June 1993 (A/CONF.157/24 (Part I), chap. III).

On the first day they came, they spoke to us of progress . . .
they measured our lands
and we said nothing . . .

On the second day they came, they invaded our houses . . .
they expelled our children
and we said nothing . . .

On the third day the water covered everything
and because we said nothing
we will never be able to do anything

Are we going to let this happen again?

EVICTION VICTIM

1. Introduction

> *[The] practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.*
>
> COMMISSION ON HUMAN RIGHTS RESOLUTION 1993/77[1]
>
> (Para. 1)

International human rights law establishes norms and principles touching on virtually all facets of life. This is reflected in the consistent reaffirmation by the international community of the indivisibility and interdependence of all human rights, whether civil, cultural, economic, political or social.

The indispensable equality of all human rights, now firmly entrenched in the provisions of international human rights instruments, is

[1] See annex I.

particularly evident when examining human rights violations relating not just to one right, but to a broad range of human rights. One such infringement of human rights is the practice of forced evictions: the removal of individuals, families or communities from their homes, land or neighbourhoods, against their will, directly or indirectly attributable to the State.

Forced evictions might not initially be viewed necessarily as an issue of human rights, but rather as a simple side-effect of development, of urban renewal, a consequence of armed conflict, or an aspect of environmental protection or energy generation by, for example, hydroelectric dams. However, to be persistently threatened or actually victimized by the act of forced eviction from one's home or land is surely one of the most supreme injustices any individual, family, household or community can face.

The perpetual insecurity of people intimidated by this practice, coupled with the frequent use of physical violence during its carrying out, begin to reveal the personal and collective trauma invariably inflicted on those faced with the prospect of forced eviction. No one volunteers to be an evictee.

Tolerated in most societies and officially encouraged in many, forced evictions dismantle what people have built over months, years and sometimes decades, destroying the livelihood, culture, community, families and homes of millions of people throughout the world every year.

Far from offering solutions to housing or urban crises, forced evictions destroy the dwellings and human settlements people call home and could perhaps be more appropriately labelled as a method of "de-housing", rather than as a practice representing a constructive, human-oriented response to the ongoing global housing crisis.

The United Nations human rights programme has devoted increasing attention to the practice of forced evictions in recent years, indicating the seriousness of global concern about the often violent removal of people from their homes. The Organization is engaged in several initiatives seeking to address the structural causes of displacement and develop effective responses for assisting and protecting displaced persons, including the efforts of the United Nations High Commissioner for Refugees, the representative of the Secretary-General on internally displaced persons, the International Committee of the Red Cross, and others.

Some have labelled the era in which we live as "the century of displacement". Recent history has seen hundreds of millions of persons being forcibly evicted from their homes, lands and communities due to a variety of causes. Every year at least 10 million people are forcibly evicted, over and above the dramatically high numbers of people moved from their places of origin as a consequence of internal displacement, ethnic cleansing, refugee flows or other manifestations of coerced population movements.

Forced evictions are not confined to rural areas where the construction of reservoirs and building projects associated with dams or other infrastructure works are taking place, or where farmers or indigenous peoples are evicted from the lands they have traditionally owned and managed. Urban areas, too, are increasingly the scene for very large-scale forced evictions. In some cities, evictions of hundreds of thousands of people in a single day have been registered. In one large west African city, in 1990, 300,000 people were deprived of their homes and possessions within a matter of hours, receiving no warning, compensation, resettlement or legal redress. They had established the neighbourhood concerned more than 30 years before the eviction took place.

The rapid growth of cities, globalizing economic forces, measures of structural adjustment, withdrawal of State interventions for securing the rights of disadvantaged groups, ongoing and often systematic discrimination, and other forces also contribute to the prevalence of forced evictions.

In recent years, there has been marked international recognition of the negative human rights implications which can and often do result from forced evictions. An emerging global consensus on the unacceptability of forced evictions is increasingly evident. One United Nations Special Rapporteur has emphasized that "the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities" (E/CN.4/Sub.2/1993/8, para. 21). Various United Nations human rights bodies have declared forced evictions to be "gross violations of human rights" and particular Governments have been asked to eradicate them to the maximum possible extent.

This Fact Sheet examines the issue of forced evictions in an international human rights framework and outlines the distinct connections between forced evictions and human rights. It also outlines the relevant

international, regional, national and local legal and other developments addressing this topic.

What are forced evictions?

The practice of forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State. It entails the effective elimination of the possibility of an individual or group living in a particular house, residence or place, and the assisted (in the case of resettlement) or unassisted (without resettlement) movement of evicted persons or groups to other areas.

The causes of forced evictions are very diverse. The practice can be carried out in connection with development and infrastructure projects, in particular dams and other energy projects, land acquisition or expropriation, housing or land reclamation measures, prestigious international events (Olympic games, World Fairs, etc.), unrestrained land or housing speculation, housing renovation, urban redevelopment or city beautification initiatives, and mass relocation or resettlement programmes.

The practice of forced eviction shares many characteristics with related phenomena such as population transfer, internal displacement of persons, forced removals during or as a result or object of armed conflict, ''ethnic cleansing'', mass exodus, refugee movements, etc. United Nations activities relating to displacement have tended to focus on the manifestations of this practice in the contexts of armed conflict, the targets of ethnic or religious persecution, or situations resulting in a breakdown of law and order.

A group of persons who do not always fall within the purview of United Nations activities of this kind are those forcibly evicted from their homes, land and communities outside the contexts of war, internal strife, famine or social disintegration. Equally, evictees may not always fall within the category of people designated as ''internally displaced persons'', although that may indeed be their case as well.

Consequently, those forced permanently to vacate their homes as a result of large-scale development or construction projects, slum-clearance operations, urban renewal, compulsory purchase orders, expropriation measures and the government tool of ''eminent domain'', environmental protection measures, land or housing speculation, and on a range of additional grounds can be classified as a distinct group of persons requiring protection under international human rights law.

While there are numerous areas of convergence, several key factors distinguish forced evictions from other forms or patterns of displacement such as internal displacement, mass exodus, refugee flows and population transfer.

First, forced evictions can always be attributed directly to specific decisions, legislation or policies of States or to the failure of States to intervene to halt forced evictions by third parties. State responsibility for most forms of involuntary movement of people is virtually always evident. In cases of forced eviction, Governments are often actively involved in the actual movement of people from their homes. In other instances of displacement, people may flee for reasons of personal safety and security (even though government may be fully responsible for failing to prevent conditions of insecurity). International action on forced evictions has made a distinction between this practice and the related practices of forced expulsions over an international border and other acts of deportation.

Secondly, there is invariably an element of "force" or coercion involved in forced evictions. Forced evictions often involve the irreparable demolition of the homes of affected persons, sometimes as a form of punishment for political or other activities. In one country, public officials have announced their intention to evict and eventually deport any immigrants residing in homes arbitrarily classified as overcrowded. Eviction orders, with or without judicial backing, almost always precede or accompany the practice of forced eviction. This is not often the case with internal displacement.

Thirdly, virtually all instances of forced eviction are planned, formulated and often announced prior to being carried out. For instance, it is not uncommon for government declarations or judicial decisions to be issued prior to an eviction being carried out or for planned evictions to be included in government development or other policies or projects. Moreover, the removal or reduction of housing subsidies for low-income groups, for example, can have a severe impact on the number of evictions in a given society.

Fourthly, forced evictions can affect both individuals and groups. They can be either mass in character or of smaller scale. The starting-point for examining this practice from a human rights perspective must be the direct impact of forced evictions on the human rights of persons and groups affected. While the practice of forced eviction itself may constitute a violation of human rights, many additional human rights can also be severely compromised when such evictions occur.

Forced evictions can, under certain circumstances and subject to specific conditions, be consistent with international human rights standards. Such evictions can be classified as "legal evictions". This distinction, however, must be interpreted in a very narrow sense. As a means of distinguishing evictions which are consistent with legal norms and those which are not, terms such as "arbitrary evictions", "illegal evictions" and "unfair evictions" are often used.

The Committee on Economic, Social and Cultural Rights has placed considerable emphasis on forced evictions and has asserted, in its General Comment No. 4 (1991) on the right to adequate housing[2], that "instances of forced eviction are *prima facie* incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law" (para. 18).

The term "exceptional circumstances" is important. By identifying precisely what such circumstances are, it can be determined what types of forced eviction are unacceptable. Invariably, a distinction must be drawn between those potentially threatened by forced eviction who are peacefully residing in a particular place and those who have actively reneged on their legal or contractual duties towards fellow tenants and/or residents or the persons or entities owning residential properties or lands.

Activities which could constitute "exceptional circumstances" include: (*a*) racist or other discriminatory statements, attacks or treatment by one tenant or resident against a neighbouring tenant; (*b*) unjustifiable destruction of rented property; (*c*) the persistent non-payment of rent despite a proven ability to pay, and in the absence of unfulfilled duties of the landlord to ensure dwelling habitability; (*d*) persistent antisocial behaviour which threatens, harasses or intimidates neighbours, or persistent behaviour which threatens public health or safety; (*e*) manifestly criminal behaviour, as defined by law, which threatens the rights of others; (*f*) the illegal occupation of property which is inhabited at the time of the occupation; (*g*) the occupation of land or homes of occupied populations by nationals of an occupying power.

Many forced evictions are often claimed to be "inevitable", "unavoidable" or the "necessary price for progress or development". The practice is often justified by Governments as being consistent with

[2] E/1992/23, annex III.

international legal norms. This is particularly true in cases of possession or squatting of land or housing by persons or groups unable to have legal access to housing resources due to the non-availability of such options. In such cases, Governments must exercise caution in accordance with respect for their existing obligations relating to the right to adequate housing.

Such instances need to be examined on a case-by-case basis, however, as the distinctions between the various manifestations of such evictions are extensive. Very few countries, for example, consider squatting a criminal offence, particularly when it occurs on public land. In every case, all persons threatened with forced eviction, notwithstanding the rationale for the planned act, should have full recourse to due process of law and/or other remedies to protect their human rights.

While a blanket prohibition on redevelopment displacing people in urban areas would be difficult to implement, factors of particular importance are the scale of the movement, the way in which displacements are currently undertaken with little or no dialogue with those affected, the lack of respect for the rights of those evicted, and the lack of any attempt to develop solutions which minimize the scale of evictions and the disruption caused to those who are forced from their homes.

The human cost of forced evictions

Although some types of forced eviction may be unavoidable, the human costs involved are so extensive that any justification must be analysed within a human rights framework. Women, children and youth, indigenous peoples, ethnic, racial, religious or other minorities, low-income social groups, occupied populations and those without legal security of tenure tend to suffer disproportionately from the practice of forced eviction.

As pointed out in a report by the Secretary-General to the Commission on the Status of Women, resettlement and evictions should be avoided, since they particularly increase the vulnerability of women and children and because women bear the brunt of traumatized and dislocated communities (E/CN.6/1994/3, para. 5). Another commentator has suggested that "by its very nature, displacement is a disruptive and painful process. Economically and culturally . . . it creates a high risk of impoverishment that typically occurs along one or several of the

following dimensions: landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation".[3]

Evicted people not only lose their homes and neighbourhoods, in which they have often invested a considerable proportion of their incomes over the years, but are also often forced to relinquish their personal possessions, since usually no warning is given before bulldozers or demolition squads destroy their settlements. Evictees also lose the often complex reciprocal relationships which provide a safety net or survival network of protection against the costs of ill health, income decline or the loss of a job, and which allow many tasks to be shared. They often lose one or more sources of livelihood as they are forced to move away from the area where they had jobs or sources of income.

In those cases where provision is made for resettlement, this is almost always at a distant site where people are expected to build homes again, but on land with little or no provision for infrastructure and services. The evicted rarely receive any financial assistance for rebuilding or compensation for the eviction.

The human costs of forced evictions are indeed substantial and can involve a wide range of additional negative impacts on the lives and livelihood of those affected, including the following: multiplying individual and social impoverishment, including homelessness and the growth of new slums; physical, psychological and emotional trauma; insecurity for the future; medical hardship and the onset of disease; substantially higher transportation costs; loss of livelihood and traditional lands; worsened housing conditions; physical injury or death resulting from arbitrary violence; the removal of children from school; arrest or imprisonment of those opposing an eviction; loss of faith by victims in the legal and political system; reduction of low-income housing stock; racial segregation; loss of culturally significant sites; the confiscation of personal goods and property; substantially higher housing costs; absence of choice of alternative accommodation; criminalizing self-help housing options; increased social isolation; and tension with dwellers already at resettlement sites.

Attempts are being made at different levels to guide the eviction process so that inordinate harm and suffering are mitigated. The impetus for adopting such guidelines clearly comes from a recognition of the negative human consequences of this process.

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[3] M. Cernea, *From Unused Social Knowledge to Policy Creation: the Case of Population Resettlement*, (Development Discussion Paper No. 342) (Harvard Institute for International Development, 1990), p. 20.

One set of guidelines asserts that:

(*a*) relocation should be avoided where possible and minimized when not avoidable;

(*b*) when relocation is unavoidable, a relocation/resettlement plan should be prepared and implemented which allocates sufficient resources to ensure that those affected are fairly compensated and rehabilitated. They should benefit from the development process on a sustainable basis. At minimum, they should be no worse off than before relocation;

(*c*) there should be full participation in the planning and management process by the main parties involved, in particular the communities affected;

(*d*) the parties benefiting from the development causing the relocation should pay the full costs of the relocation process, including the socio-economic rehabilitation of those affected to at least their former level.

These points reveal the complexity of the relocation process and indicate that arguments by evictors that their only duty is to "resettle" evictees are too simplistic.

These considerations also form the basis of another set of guidelines adopted by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) in 1991, which state:

> Development projects that displace people involuntarily generally give rise to severe economic, social and environmental problems: production systems are dismantled, productive assets and income sources are lost, and people are relocated to environments where their social and productive skills may be less applicable and the competition for resources greater. Involuntary resettlement thus may cause severe long-term hardship, impoverishment and environmental damage unless appropriate measures are carefully planned and carried out. Past experience indicates that the absence of explicit guidelines regarding involuntary resettlement has contributed in many projects to underestimating the complexity and impact of displacement[4].

The manner in which many evictions are carried out in practice, notwithstanding the existence of guidelines on relocation, contributes significantly to the human hardships inherent in the process. Despite the existence of human rights norms and guidelines designed to

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[4] *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects* (Paris, OECD, 1991), p. 5

improve relocation procedures, the use of violence and terror tactics as methods of facilitating forced evictions remains disturbingly common.

Why do forced evictions occur?

The multidimensional effects of forced eviction are well known by those supporting and promoting this practice, and thus virtually no eviction is carried out without some form of public justification seeking to legitimize the action. The fact that, in many third world cities, half of the population resides in acutely inadequate housing conditions is sufficient grounds for eviction proponents to claim the "reasonableness" of forcibly evicting the poor from their neighbourhoods, slums or shanty towns in order to "beautify the city". This half of the population is in a far weaker legal position from which to fight a planned eviction or at least negotiate concessions such as time, support for moving and acquiring alternative accommodation, and compensation.

Justifying forced evictions in this manner is tantamount to making the victims scapegoats in social and legal structures which deny them the right to a decent, safe and healthy place to live, as well as a broad range of other human rights.

Forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including national governments, local and municipal governments, occupation authorities, developers, planners, landlords (both public and private), property speculators and international financial institutions and other agencies. Importantly, the ultimate legal responsibility for preventing forced evictions, however, always rests with Governments, no matter which actors are in fact the driving forces behind a particular eviction plan.

Eviction operations tend to be most prevalent in countries or parts of cities with the worst housing conditions. Wealthier classes virtually never face forced eviction, and are always spared mass eviction. Housing circumstances such as slums, squatter settlements, exploitative landlords, homelessness, non-responsive and ineffective legal systems, uncontrolled urbanization and other factors not only serve as physical manifestations of governmental inability or unwillingness to take seriously the housing rights of their populace, but are also common justifications by Governments and other evictors for forcing people from their homes.

It is one thing to assist dwellers in attaining their rights through programmes of renovation of their homes and communities in recogni-

tion of the social processes involved in the popular housing sector, or through other measures of improvement on site excluding evictions. (Increasing attention has been paid by the human rights community to the positive right to reside and resettle in those instances when housing is unsafe, unhealthy or otherwise threatening to the rights of dwellers. The right to return to one's home following displacement is also gaining prominence.) These instances differ markedly, however, from situations where people are wantonly thrown out of their homes and sent to the urban edge to start their lives over again. Because forced evictions often occur in locations dominated by inadequate housing conditions and in areas where housing rights are either actively or passively denied, without a sober rethinking of policy, law and action, evictions will continue to grow as a consequence of the failure of Governments to fulfil such rights.

Forced evictions in urban areas often involve the transfer of high-value land from poorer groups to middle- or upper-income groups or the freeing of land to build houses, commercial developments, roads and other forms of infrastructure which primarily benefit wealthier groups.

Recognizing the physical and economic impact of forced eviction on persons and communities threatened with the loss of their homes and lands, eviction proponents frequently use a variety of arguments seeking to offer publicly palatable justifications for promoting the process. Some of the most frequent public justifications are: to build new and improved housing; to improve or beautify the site or city; to protect public health, hygiene or safety; to protect the safety of pedestrians on pavements; to provide infrastructure, roads or public works; to protect historic buildings or landmarks; to provide "good scenery" for foreign guests; to construct facilities for international events; to construct government buildings; to increase arable land for agriculture; to improve housing conditions for the inhabitants; to mete out punishment for political activities; to prevent the growth of a city; to conserve ecologically important locations; to eradicate safe havens for criminals; to carry out redevelopment projects; to deter future squatting; to rent out premises to new tenants; to protect dwellers from threats of flooding; to dredge filtrated canals; to build sports stadiums or arenas; to reclaim public land; and to separate ethnic or racial groups.

Superficially, many of these justifications may appear reasonable. However, in the bulk of eviction cases, evictees, in addition to having faced a violation of human rights, tend to end up worse off than before the eviction—despite the fact that even before being evicted their living and housing conditions may have been anything but satisfactory. Approaching the issue from the human rights perspective prior to

examining the logic of eviction rationale, therefore, one is forced to reassess just how "reasonable" most of these justifications are in practical and human terms.

Terms such as "unavoidable" and "in the public interest" seek to indicate the inevitability of eviction, but are frequently used before exploring possible alternatives to a planned eviction.

Sadly, it remains commonplace for economic and similar considerations to take precedence over the human rights of disadvantaged and vulnerable groups and this trend may intensify in the era of globalization unless adequate safeguards are developed and enforced.

International human rights law creates obligations requiring States to take legislative and other measures to ensure that the beneficiaries of such rights are protected from violations, as well as guaranteeing effective remedies if rights are infringed. Although legislation in many countries prohibits "illegal" or "arbitrary" evictions, such laws are routinely violated, ignored in practice or not enforced. As a result, millions of people are subjected annually to unfair and unlawful forced evictions.

Whether labelled as eviction, displacement, resettlement or removal, this practice continues, in one form or another, in all countries. Some States are clearly more affected than others. Indeed, the political and economic systems governing a country determine the extent to which forced evictions are sanctioned, tolerated or prohibited. Although this is certainly not always the case, the greater the degree of democratically oriented, popularly based participation in all aspects of the development and housing process and the greater the degree to which communities are politically organized (or are allowed by the state to assemble freely and to organize), the smaller the likelihood that mass evictions will occur. Similarly, Governments which accept and act decisively on their responsibility under human rights law to house their citizens tend less frequently to be proponents of mass forced evictions.

Wherever they are carried out, forced evictions are an unpopular measure and a subsequent threat to elected Governments when, and if, elections are held. Generally, forced evictions are rarely carried out immediately preceding elections, due precisely to their social, political or legal unacceptability.

The duty of Governments not to subject their citizens to forced eviction indisputably has universal relevance for all States. While particular elements of the human right to adequate housing may be more difficult or take longer to attain for poorer States, any assumption that

the prohibition of forced evictions is only a progressive obligation is seriously flawed. Every Government, notwithstanding its position on the global development scale, can act immediately to halt forced evictions and ensure this aspect of the housing rights of their citizens. In the final analysis, a lack of available resources cannot be used to justify forced evictions. This practice can be effectively eliminated when and where Governments choose to do so.

2. Human rights and forced evictions

> *... The right to adequate housing [is] a basic human right ... people should be protected by law against unfair eviction from their homes or land.*
>
> AGENDA 21[5]
>
> (Paras. 7.6 and 7.9 (*b*))

All stages of the eviction process have identifiable human rights implications. The right to adequate housing, which is widely recognized under international human rights law, includes the right to be protected from forced eviction. This right has been expressed in various formulations in numerous human rights instruments, most notably the Universal Declaration of Human Rights (art. 25, para. 1) and the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1).[6]

The International Convention on the Elimination of All Forms of Racial Discrimination prohibits and obliges States parties to eliminate racial discrimination in all its forms in the enjoyment of, *inter alia*, the right to housing (art. 5 (*e*) (iii)). The Convention on the Elimination of All Forms of Discrimination against Women requires States parties to eliminate discrimination against women in rural areas and to ensure to such women the right "to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply" (art. 14, para. 2 (*h*)).

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[5] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the conference, resolution 1, annex II.

[6] For the texts of the international human rights instruments cited in this Fact Sheet, see *Human Rights: A Compilation of International Instruments*, vol. I (2 parts), *Universal Instruments* (United Nations publication, Sales No. E.94.XIV.1).

Under the Convention on the Rights of the Child (art. 27), States parties agree to take appropriate measures to assist parents and others responsible for children to implement the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. They also agree, in case of need, to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The Declaration on Social Progress and Development, the Declaration of the Rights of the Child, the Vancouver Declaration on Human Settlements, 1976,[7] the 1978 Declaration on Race and Racial Prejudice, adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Declaration on the Right to Development and many other texts affirm the human right to adequate housing. Several recently established human rights standards recognize the housing requirements of certain social groups, such as migrant workers, disabled persons, the elderly and indigenous peoples.

A series of United Nations resolutions reaffirming housing as a fundamental human right have been adopted since 1986 (see annexes I and II). Statements have been issued in the context of the 1996 United Nations Conference on Human Settlements (Habitat II) by more than 10 United Nations human rights and other institutions supporting further efforts towards achieving the right to housing for all. An experts meeting was convened in early 1996 by the United Nations Centre for Human Rights and the United Nations Centre for Human Settlements (Habitat) which again called for renewed United Nations action towards clarifying, strengthening and supplementing the right to adequate housing.

More than 50 constitutions recognize the constituent elements of housing rights as human rights or specify the duties of States in the housing sphere.[8]

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[7] *Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976* (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I.

[8] The constitutions of the following States contain various formulations of housing rights and governmental obligations in the housing sphere: Afghanistan, Argentina, Bahrain, Bangladesh, Belgium, Bolivia, Brazil, Burkina Faso, Cambodia, Colombia, Costa Rica, Democratic People's Republic of Korea, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Fiji, Finland, Greece, Guatemala, Guyana, Haiti, Honduras, Iran (Islamic Republic of), Italy, Kenya, Lithuania, Mali, Mexico, Nepal, Netherlands, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Russian Federation, Sao Tome and Principe, Seychelles, Slovenia, South Africa (draft Constitution), Spain, Sri Lanka, Suriname, Sweden, Turkey, Ukraine, Venezuela and Viet Nam (E/CN.4/Sub.2/1994/20, annex I).

While the right to adequate housing is perhaps the most obvious human right violated by forced evictions, a number of other rights are also affected. The rights to freedom of movement and to choose one's residence, recognized in many international laws and national constitutions, are infringed when forced evictions occur. The right to security of the person, also widely established, means little in practical terms when people are forcibly evicted with violence, bulldozers and intimidation. Direct governmental harassment, arrests or even killings of community leaders opposing forced evictions are common and violate the rights to life, to freedom of expression and to join organizations of one's choice. In the majority of eviction cases, crucial rights to information and popular participation are also denied.

When children are unable to attend school due to a forced eviction, the right to education is sacrificed. When people lose their source of employment, the right to work is breached. When psychological and physical health are damaged by the constant threat of eviction, issues of the right to health are raised. When families and communities are torn apart by eviction, the right to family life is infringed. When uninvited eviction squads forcibly enter one's home, the rights to privacy and to security of the home are violated. Emerging human rights such as the right to remain in one's home or land and the right to return to one's home can equally be lost in the event of a forced eviction.

Legal obligations enshrined in the 1949 Geneva Conventions and the 1977 Additional Protocols thereto prohibit the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction in the context of both international and non-international armed conflict.

Approaching housing concerns from the point of view of human rights and the relationship between these rights and forced evictions puts a clear focus on the legal obligations of Governments to respect, protect and fulfil housing rights. Such a perspective also provides clear criteria against which action, policies, practice and legislation can be monitored and regulated. It creates a systematic, common and universal framework—relevant to all countries—for developing appropriate legal and other measures leading to a substantial reduction in the practice of forced evictions. The housing-rights approach promotes good governance, governmental accountability, transparency, democratic decision-making, popular participation and international responsibility.

Forced evictions: a violation of human rights

General Comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing[9] states that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats" (para. 8 (*a*)). The same text asserts that legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions andlegal procedures seeking compensation following an illegal eviction should be available (para. 17).

The Committee has also requested Governments which have ratified the International Covenant on Economic, Social and Cultural Rights to provide it periodically with various types of information pertaining directly to the practice of forced eviction. For instance, States parties are requested to provide information as to the number of persons evicted in the past five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction; information on legislation concerning the rights of tenants to security of tenure and to protection from eviction, as well as on legislation specifically prohibiting any form of eviction; and information on measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparations for international events (Olympic games, World Fairs, conferences, etc.), "beautiful city" campaigns, etc. which guarantee protection from eviction or rehousing based on mutual consent for any persons living at or near the affected sites.

In several cases, the Committee has concluded that violations of article 11, paragraph 1, of the Covenant had taken place due to the practice of forced evictions officially sanctioned or tolerated by States parties. The Committee has also urged several States not to implement plans envisaging forced evictions. In one case, this appears to have been instrumental in protecting the rights and homes of more than 70,000 persons threatened with forced eviction.

One of the principal aspects of the obligation to respect the right to adequate housing is the duty of States parties not to allow forced evictions to occur.

As stated above, while violation of article 11, paragraph 1, of the Covenant may be the most obvious effect of forced eviction, this prac-

[9] See footnote 2 above.

tice also threatens the enjoyment of a broad range of other human rights protected by the Covenant and by other human rights instruments. Such sentiments have been echoed on several occasions by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. An analytical report on forced evictions compiled by the Secretary-General and submitted to the Commission on Human Rights in 1994 (E/CN.4/1994/20) also expressed the same view.

Among other international instruments, Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992[10] directly addresses the issue of forced evictions. It states:

> All countries should adopt and/or strengthen national shelter strategies, with targets based, as appropriate, on the principles and recommendations contained in the Global Strategy for Shelter to the Year 2000. People should be protected by law against unfair eviction from their homes or land . . . (Para. 7.9 (*b*).)

The Commission on Human Settlements has also urged all States to cease any practices which result, or could result, in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere.

International pronouncements have increasingly addressed the issue of liability for forced evictions. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12 of 26 August 1991 provides guidance in determining the legal responsibilities of those who evict. It states that "forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including, but not limited to, occupation authorities, national Governments, local governments, developers, planners, landlords, property speculators and bilateral and international financial institutions and aid agencies". The resolution goes on to emphasize that "ultimate responsibility for preventing evictions rests with Governments" (preamble).

The jurisprudence of other treaty bodies within the United Nations system, as well as of bodies responsible for monitoring regional human rights instruments, reflects the position that forced evictions constitute a violation of a broad range of human rights.

International financial institutions have played and continue to play a controversial role in promoting the practice of forced evictions. Recognizing that such involvement can have human rights implica-

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[10] See footnote 5 above.

tions, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 2 (1990),[11] stated:

> ... international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation ...
>
> ...
>
> Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account ... (Paras. 6 and 8 (*d*).)

In general, it appears that a global consensus is emerging which recognizes the essential illegality of forced evictions under international human rights standards and regards the practice as a clear violation of a broad range of basic human rights.

Security of tenure as a human right

The universal conferral of security of tenure on all citizens would perhaps constitute the single most effective action which Governments could take to curtail the practice of forced evictions. Security of tenure —the legal right to protection from arbitrary or forced eviction from one's home or land—plays a significant role in discouraging the eviction process. The provision of legal land title to dwellers currently lacking such protection can go a long way towards preventing forced evictions.

Security of tenure has increasingly been addressed within the human rights domain, and several encouraging developments have occurred in recent years firmly linking housing rights, evictions and the right to security of tenure. General Comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing[12] clearly places security of tenure in the category of legal entitlements arising under the International Covenant on Economic, Social and Cultural Rights:

> ... Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups ... (Para. 8 (*a*).)

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[11] E/1990/23, annex III.

[12] See footnote 2 above.

The Secretary-General's analytical report on forced evictions (E/CN.4/1994/20) refers to the necessity of conferring security of tenure in the following terms: "Governments are often not required to do more than refrain from forced evictions in order to respect the right to adequate housing, as long as a commitment to provide support to the self-help housing efforts of the poor exists—through technical, legal and financial assistance. In this situation, one of the most far-reaching measures is the provision of security of tenure" (para. 160).

According to the United Nations Centre for Human Settlements (Habitat), as well as the same report of the Secretary-General on forced evictions, legal protection in the form of granting an occupancy permit or title to a piece of land destined for residential use is the single most important step which Governments can take to honour their commitment to the right to adequate housing, and to eradicate the practice of forced evictions. Such measures, in turn, often trigger an impressive level of investment in self-help housing, especially among the poor in developing countries.

Resolutions adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights have recommended that Governments undertake policy and legislative measures aimed at curtailing the practice of forced eviction, including the conferral of legal security of tenure on those currently threatened with forced eviction, on the basis of effective consultation and negotiation with affected persons and groups. For instance, in its resolution 1993/77 of 10 March 1993, in language becoming increasingly common among United Nations human rights bodies, the Commission on Human Rights urged Governments "to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation" (para. 3).

In its resolution 14/6 of 5 May 1993, the Commission on Human Settlements urged States to establish appropriate monitoring mechanisms to provide indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure and other issues arising from the right to adequate housing (para. 6). Furthermore, Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992[13] is explicit in its recognition of the importance of security of tenure:

[13] See footnote 5 above.

. . . all countries should consider developing national land-resource management plans to guide land-resource development and utilization and, to that end, should:

. . .

(*f*) Establish appropriate forms of land tenure that provide security of tenure for all land-users, especially indigenous people, women, local communities, the low-income urban dwellers and the rural poor . . . (Para. 7.30 (*f*).)

Read in conjunction with one another, the above statements, together with the other foundations of housing rights under international law, indicate that security of tenure for everyone has become increasingly entrenched in the official legal interpretation of the human right to adequate housing.

3. National legislative and policy responses to forced eviction

> *. . . all citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.*
>
> GLOBAL STRATEGY FOR SHELTER TO THE YEAR 2000[14]
> (Para. 13)

Most States have adopted legislation of one kind or another addressing the practice of forced evictions, thereby providing a measure of protection against such acts. In some States, such as the Philippines and South Africa, constitutional provisions stipulate that urban or rural poor dwellers shall not be evicted nor their dwellings demolished except in accordance with the law and in a just and humane manner.

Also in the Philippines, the Urban Development and Housing Act (1992) discourages evictions and demolitions, placing stringent conditions on such measures, as well as establishing a three-year moratorium on forced evictions which protects certain groups of people.

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[14] Adopted by General Assembly resolution 43/181 of 20 December 1988. See *Official Records of the General Assembly, Forty-third Session*, Supplement No. 8, addendum (A/43/8/Add.1).

Numerous countries include protection against forced evictions in landlord-tenant legislation and in the provisions of laws relating to property or the right to peaceful enjoyment of possessions. The Protection from Eviction Act in the United Kingdom stipulates penalties for those responsible for carrying out illegal evictions or harassment against tenants, while a 1990 French law provides legal housing rights protection for those threatened with eviction who have nowhere to go.

The Interim Protection of Land Rights Bill currently pending in the South African Parliament would protect farm workers from arbitrary eviction by farmers, and a draft housing law in Namibia recognizes the right of every citizen to a place to live—a right that may not be violated by forced removal or arbitrary eviction. The National Housing Policy in India (1994) provides that the central and state Governments will take steps to avoid forcible relocation or "dishousing" of slum dwellers and encourage *in situ* upgrading, slum renovation and progressive housing development, with conferral of occupancy rights wherever feasible, and to undertake selective relocation with community involvement only for clearance of priority sites in the public interest.

The Law of the Russian Federation on Basic Principles of Federal Housing Policy ensures the right to housing and requires the Government to provide alternative accommodation to anyone evicted due to the non-payment of rent. All member States of the European Union have entrenched legal regulations protecting tenants from arbitrary eviction; when tenants breach contractual obligations, specific legal procedures must be followed. Laws in several countries, including Brazil, Colombia and Paraguay, enshrine legal protection against forced eviction for indigenous peoples.

These and other national laws provide an indication of how citizens may be at least partially protected from arbitrary or illegal forced evictions. However, while they are a positive development, there is no clear or universal correlation between the existence of such legislation and the real protection of people and prevention of forced evictions. Such laws do not necessarily eliminate the practice of forced evictions, although they can protect dwellers if they are implemented in good faith by national Governments.

The law, particularly in the form of presidential decrees, may also actively call for forced eviction in particular areas or actually criminalize the adverse possession of land—ignoring international standards. In many instances, such measures serve to undermine and erode legal protection against forced eviction and can be given undue priority, constituting the "legal" basis for such practices.

The power of the state in most countries to acquire land through processes of expropriation, compulsory purchase orders and the right of eminent domain, combined with excessively broad interpretations of public order, the public purpose or national security, creates conditions ripe for the legitimized removal of people from their homes against their will. Ironically, these same measures could be used by the authorities to free land and urban space for the construction of social housing to benefit people who have yet to satisfy their housing rights. This positive approach is unfortunately applied too rarely.

4. Responses by civil society to forced evictions

Civil society responses to the problem of forced evictions, have in some cases been successful in preventing or limiting the scale of such evictions, as well as in encouraging positive legislative activity aimed at reducing the prevalence or scale of the practice. A broad range of strategies, action and programmes has been undertaken in this regard, including the formulation of alternative urban policy proposals drastically limiting the necessity of forced eviction, mobilization of communities affected by forced evictions, invoking judicial remedies aimed at preventing planned evictions, and increasingly instigating international legal measures of redress.

International, regional, national and local non-governmental organizations (NGOs) and community-based organizations (CBOs) are becoming increasingly active in efforts to oppose planned forced evictions. Campaigns are under way both globally and within many countries, each aimed in part at greatly limiting the still common eviction policies of many Governments. Much of the information on forced evictions currently available to the international community comes from CBOs and NGOs which have closely monitored forced evictions and scrutinized the practice. These organizations continue to make meaningful contributions towards understanding the eviction process, advocating alternatives to it, organizing affected people in the fight against the practice, providing legal education and generating greater global awareness about forced evictions.

NGOs and CBOs have developed a wide range of alternative plans in instances where evictions were about to occur. In the Domini-

can Republic, for example, NGOs such as COPADEBA, CEDIAL and Ciudad Alternativa have drafted detailed alternative schemes for urban development in Santo Domingo. The Asian Coalition for Housing Rights (ACHR) and other groups in Thailand have sought to incorporate eviction alternatives and participation-based development into the planning process in Asian urban centres such as Bangkok, Beijing, Ho Chi Minh City, Seoul, Hong Kong and Manila.

The National Campaign for Housing Rights (NCHR) in India has assisted in shifting the national view of housing from that of a structure to that of primarily a social and popular process. In so doing, NCHR has prepared a draft Housing Rights Bill which includes substantial protection against forced eviction. NGOs and CBOs also fulfil the important role of exposing and publicizing actual and planned evictions throughout the human rights community and mass media.

At the international level, Habitat International Coalition is engaged in a Global Campaign for Housing Rights, involving a series of activities geared towards achieving the aim of a safe and secure place to live for everyone, everywhere. The Centre on Housing Rights and Evictions (COHRE) also publishes annual reports listing all the major evictions which have taken place.

In his analytical report on forced evictions (E/CN.4/1994/20, para. 174), the Secretary-General recognized that the role of non-governmental organizations in the prevention and elimination of the practice of forced evictions was one of great importance which should be promoted to the full. Their involvement as intermediaries between policy makers and affected persons for the mutual benefit of all actors involved and especially to defend the interests of victims was emphasized. Well-informed NGOs could help to obtain political support and alert public opinion to deter planned forced evictions, as well as coordinating and assisting in resettlement, as their role was often crucial in the relocation process. In addition, people often did not know what their rights and options were in situations of looming forced evictions, and NGOs could give legal and professional assistance.

Organizations such as the International Rivers Network, Probe International and The Ecologist continue to place emphasis on forced evictions in connection with large-scale dam and hydroelectric projects, particularly those financed by the international financial institutions, most notably the World Bank.

5. Remedies against forced evictions

As States parties to human rights instruments are legally bound under international law to ensure the realization of the rights guaranteed in those instruments, international bodies have been established to enforce or monitor compliance with the various standards. Most United Nations human rights texts have corresponding committees, commissions or other bodies designed to provide some recourse if any State party fails to introduce adequate domestic measures or remedies or intentionally violates human rights.

Some international enforcement bodies are able to receive and adjudicate individual complaints, also known as petitions or communications, alleging violations of a State's obligations under a particular treaty. Some human rights treaties provide the opportunity for States parties to lodge complaints against other States parties to the same treaty, although this procedure has rarely been invoked.

Most human rights treaties rely heavily on a State reporting procedure and on the authority of the committee in question to review such reports in order to determine whether or not States parties have complied with the various obligations involved. Under the International Covenant on Economic, Social and Cultural Rights, for example, all States parties are required under articles 16 and 17 to submit comprehensive reports once every five years outlining all legislative, policy and other measures which they have taken to ensure compliance with the rights set out in the Covenant.

The Covenant does not yet include an individual complaints mechanism, although the possibility of amending the Covenant to incorporate such a mechanism has been discussed extensively by the Committee on Economic, Social and Cultural Rights and other bodies.

Despite the absence of a formal complaints procedure within a treaty, however, monitoring bodies such as the Committee on Economic, Social and Cultural Rights are able, through the examination of States parties' reports, the adoption of legally interpretative "General Comments" on certain provisions of the treaty (elaborating States' obligations arising from the treaty) and the receipt of information from United Nations specialized agencies (ILO, WHO, UNESCO, etc.) and non-governmental organizations, to make consistent, balanced and constructive observations as to the degree to which States parties are complying with their obligations under international law.

Currently lacking a formal petition procedure, the Committee on Economic, Social and Cultural Rights has agreed to receive written submissions from non-governmental organizations and to hear oral information from them in the context of its consideration of reports of States parties on the implementation of particular articles of the Covenant. According to the Committee, the main purpose of this procedure is to enable the Committee to have access to all possible sources of information.

An important part of the role of international human rights bodies such as the Commission on Human Rights, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights is to promote and monitor compliance with international human rights texts. Such committees may adopt resolutions and concluding observations, carry out on-site investigations, publish reports and engage in investigative or educational activities, depending on their mandate.

According to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights,[15] "States parties shall provide for effective remedies, including, where appropriate, judicial remedies" (principle 19). At the national level, the judiciary must consider international human rights law as an interpretative aid to domestic law and ensure that domestic law is interpreted and applied in a manner consistent with the provisions of international human rights instruments ratified by the State. From the perspective of international law, the underlying principle is that courts should avoid placing their Government in violation of the terms of a treaty which it has ratified.

Generally, under international human rights law, States undertake to ensure certain human rights to all individuals under their jurisdiction and to do so without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All States, therefore, as part of the international community, undertake to ensure, at minimum: (*a*) that any person whose rights or freedoms are violated shall have an effective domestic remedy for such violation, even if the violation has been committed by persons acting in an official capacity; (*b*) that any person claiming such remedy shall have his or her rights determined by a competent judicial, administrative or legislative authority, or by any other competent

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[15]Approved by a group of experts in international law meeting at Maastricht (Netherlands) from 2 to 6 June 1986. See *Human Rights Quarterly*, Vol. 9, No. 2 (May 1987), p. 122. Text reproduced in United Nations document E/CN.4/1987/17, annex.

authority provided for by the legal system of the State, with a view to developing the possibilities of judicial remedy; (*c*) that the competent authorities shall enforce such remedies when granted.

The necessity of implementing international human rights obligations through domestic legislation is consistent with article 27 of the 1969 Vienna Convention on the Law of Treaties, which states that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Indeed, the International Covenant on Economic, Social and Cultural Rights, for example, often requires legislative action to be taken in cases where existing laws are in violation of the obligations assumed under the Covenant.

The Committee on Economic, Social and Cultural Rights emphasized the importance of domestic legal remedies with respect to illegal evictions or discrimination in access to housing in its General Comment No. 4 (1991) on the right to adequate housing:[16]

> The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (*a*) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (*b*) legal procedures seeking compensation following an illegal eviction; (*c*) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (*d*) allegations of any form of discrimination in the allocation and availability of access to housing; and (*e*) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness. (Para. 17.)

In most cases, evicted persons and communities do not receive any form of compensation whatsoever; where it is provided, it tends to fall far short of the requirements of those moved. This situation is clearly unsatisfactory viewed from any angle, and even more so seen from the human rights perspective.

As pointed out in the analytical report of the Secretary-General on forced evictions, compensation and restitution may take various forms. Cash payments represent the most frequent form of compensation, although experience shows that the money offered is usually insufficient and it is argued that this type of indemnity by itself is an inadequate form of countering the problems involved in forced evictions (E(CN.4/1994/20, para. 180). Alternative accommodation at relocation sites is one of the most feasible ways to reduce the adverse effects of evictions. However, overcrowding, long distances from employment

[16] See footnote 2 above.

opportunities and previous neighbours, lack of basic amenities and a general decline in living conditions are too frequently characteristics of this alternative. At the other extreme, the costs of the alternative housing offered may far exceed the means of the evicted persons. Furthermore, in many cases the victims are offered no compensation whatsoever. Thus the situation with regard to the consequences of forced evictions is clearly unsatisfactory and points to the urgent need to avoid the practice in the first instance, rather than trying to "soften the blow" afterwards (ibid., para. 181).

Many human rights texts contain clauses guaranteeing various forms of compensation should the rights in question be violated. However, these are almost invariably texts dealing with civil and political rights, not economic, social and cultural rights such as the right to adequate housing.

Few Governments will openly defend the legitimacy of an eviction without any form of compensation. States usually recognize the legitimacy of compensation-claims whether or not those affected actually receive adequate compensation or are occupying land in technically illegal circumstances. This view has been reflected in a number of relevant texts, including Commission on Human Rights resolution 1993/77 of 10 March 1993:

> . . . all Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups . . . (Para. 4.)

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985, outlines basic compensatory principles which could be applied in the case of illegal evictions to victims of this clear violation of human rights. These include the following: (*a*) victims are entitled to prompt redress for the harm they have suffered; (*b*) victims should be informed of their rights in seeking redress; (*c*) offenders or third parties should make fair restitution to victims and their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights; (*d*) when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation; (*e*) victims should receive the necessary material, medical, psychological and social assistance and support.

6. Towards new measures of prevention, protection and redress

Despite the increased attention given to the phenomenon of forced evictions by the human rights community, the practice certainly does not appear to be declining. This fact highlights the compelling need for new legislation, guidelines and enforcement mechanisms geared towards eviction prevention. There is a clear need for a concerted search for viable, people-based alternatives to forced eviction whenever feasible or possible. In the majority of cases, planned forced evictions can be prevented.

In those cases where a situation of so-called "unavoidability" exists, only rarely are all possible alternatives faithfully explored and considered. Various international initiatives would be particularly valuable in helping to eradicate forced evictions.

Model eviction-prevention legislation could seek to identify those areas of the law which should be re-examined for their consistency with international legal interpretations of the right to adequate housing. In his analytical report on forced evictions, the Secretary-General addressed the need for further legislative action on housing rights as a means of curbing the practice:

> . . . The fact that the practice of forced evictions constitutes an act which violates the right to adequate housing, and other human rights by implication, leads to the conclusion that there exists a substantial gap between legal norms and practice. The involuntary removal of persons, families and groups from their homes is a current practice in many countries which, in most cases, is contradictory to, if not a blatant infringement of, fundamental, internationally recognized human rights law. (E/CN.4/1994/20, para. 143.)

At the national level, this suggests options including constitutional amendments or revisions explicitly designed to prevent evictions from taking place. Comprehensive and detailed legal provisions against forced evictions could also be adopted. The precise grounds on which evictions cannot be justified, the legal remedies available to those illegally evicted and other core issues could be included in such legislation.

Similarly, national housing rights acts could be adopted with a view to ensuring full and comprehensive legal protection for everyone in the housing field. Any serious attempt by Governments to review legislation with a view to achieving consistency between national laws and international legal obligations must include an analysis of the rela-

tionship between existing law and forced evictions. Purely State-based or lawyer-based initiatives, however, are likely to reinforce often inappropriate views of housing rights and evictions. Full and active participation during all stages of the legislative process by all sectors of society must accompany any legal developments in these areas.

National Governments and international institutions could also consider developing human rights-based relocation guidelines, eviction-impact statements and codes of conduct for use in exceptional circumstances. The ultimate goals of such procedures would be to protect the rights of potential evictees, reduce social tension and mitigate hardship.

The relative lack of clarity of existing legal norms, the sometimes major discrepancies in current formulations of housing rights laws and the still-prevalent disagreements regarding the degree of protection against forced evictions continue to confront the legal side of the housing rights debate. Supplementing international legal norms with an international instrument on housing rights could, if this were appropriately worded and supported by adequate enforcement mechanisms and popular awareness, bring progress in fulfilling these rights and providing strengthened protection against forced eviction.

As noted earlier, forced evictions often tend to accompany the planning and preparation of large international events and celebrations. A report by the Secretary-General outlining guidelines on international events and forced evictions was issued in 1995 (E/CN.4/Sub.2/1995/13).

Preventive monitoring activities on forced evictions, relocation and resettlement, including the undertaking of fact-finding or assessment missions, would assist both in seeking alternatives to planned evictions, and in indicating the seriousness with which the international community views the practice. Such missions, which could be organized under the auspices of the United Nations human rights programme, could be sent to countries contemplating large-scale relocations or forced evictions with a view to assisting the Government in question to comply fully with its freely accepted human rights and housing rights obligations by avoiding such evictions.

7. Conclusions

Every State has some form of legal obligation to respect, protect and fulfil the human right to adequate housing, and by inference not to sponsor, tolerate or carry out forced evictions. Human rights law is central in the quest to protect people from the frequent violence and despair so commonly associated with the eviction process.

Forced evictions, both past and planned, require immediate and forthright attention—a focus which the practice is not sufficiently receiving from the international community at present. If Governments and international organizations were to respond to the warning signals of forced evictions in a rapid and more concerted manner, perhaps this destructive practice could be mitigated to an appreciable degree.

The poorest sectors of society are by far the most frequent victims of this human rights violation—that is, the social group already disproportionately denied other rights relating to an adequate standard of living. Circumstances leading to forced evictions are more likely to occur where there are larger wealth disparities and where the supply of land for housing is constrained.

The combination of a high proportion of urban populations having very limited incomes and high housing and land prices, which ensure that the cheapest legal accommodation is beyond their reach, forces such groups to enter the illegal housing and land markets. Unless far greater attention is paid to the human rights violations resulting from forced evictions and to the causes of this practice, this global phenomenon will continue to grow.

While no human rights treaty states an explicit "right not to be evicted", the intimate links between this ideal, the right to housing and other human rights are clear. The perspectives of human rights monitoring bodies in addressing forced evictions within the context of housing rights are continuing to gain greater acceptance and applicability. Although there are certain exceptional cases in which a forced eviction might be justified or reasonable, even within a human rights framework, the overwhelming majority of such evictions not only lead to greater social injustice, but also amount to gross and systematic violations of fundamental internationally recognized human rights.

The need for a renewed commitment by the international community and Governments finally to abolish forced evictions is indisputable. Should the necessary initiatives fail to materialize, the basic human right to a place to live, in peace and dignity, will continue to be actively denied to millions of people throughout the world.

ANNEXES

ANNEX I

Commission on Human Rights resolution 1993/77[a]

1993/77. *FORCED EVICTIONS*

The Commission on Human Rights,

Recalling Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12 of 26 August 1991,

Also recalling its own resolution 1992/10 of 21 February 1992, in which it took note with particular interest of General Comment No. 4 (1991) on the right to adequate housing (E/1992/23, annex III), adopted on 12 December 1991 by the Committee on Economic, Social and Cultural Rights at its sixth session, and the reaffirmed importance attached in this framework to respect for human dignity and the principle of non-discrimination,

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity,

Concerned that, according to United Nations statistics, in excess of one billion persons throughout the world are homeless or inadequately housed, and that this number is growing,

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions,

Disturbed that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,

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[a] Adopted on 10 March 1993.

Aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors,

Emphasizing that ultimate legal responsibility for preventing forced evictions rests with governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, *inter alia*, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6),

Mindful of the questions concerning forced evictions included in the guidelines for States' reports submitted in conformity with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23, annex IV),

Noting with appreciation that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4, considered that instances of forced evictions were, *prima facie*, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (E/1992/23, annex III, para. 18),

Taking note of the observations of the Committee on Economic, Social and Cultural Rights at its fifth and sixth sessions concerning forced evictions,

Taking note also of the inclusion of forced evictions as one of the primary causes of the international housing crisis in the working paper on the right to adequate housing, prepared by Mr. Rajindar Sachar (E/CN.4/Sub.2/1992/15),

Taking note further of Sub-Commission resolution 1992/14 of 27 August 1992,

1. *Affirms* that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;

2. *Urges* Governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced evictions;

3. *Also urges* Governments to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

4. *Recommends* that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes or needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups;

5. *Requests* the Secretary-General to transmit the present resolution to Governments, relevant United Nations bodies, including the United Nations Centre on Human Settlements, the specialized agencies, regional, intergovernmental and non-governmental organizations and community-based organizations, soliciting their views and comments;

6. *Also requests* the Secretary-General to compile an analytical report on the practice of forced evictions, based on an analysis of international law and jurisprudence and information submitted in accordance with paragraph 5 of the present resolution, and to submit his report to the Commission at its fiftieth session;

7. *Decides* to consider the analytical report at its fiftieth session, under the agenda item entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social an Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights".

ANNEX II

Other international provisions and pronouncements on forced evictions

(Extracts)

1. General Comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (art. 11 (1) of the Covenant)[a]

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(*a*) *Legal security of tenure.* Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

. . .

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as

[a] E/1992/23, annex III.

noted by the committee in its General Comment No. 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

...

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (*a*) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (*b*) legal procedures seeking compensation following an illegal eviction; (*c*) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (*d*) allegations of any form of discrimination in the allocation and availability of access to housing; and (*e*) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

...

2. General Comment No. 2 (1990) of the Committee on Economic, Social and Cultural Rights on international technical assistance measures (art. 22 of the Covenant)[b]

6. ... international agencies should scrupulously avoid involvement in projects which, for example . . . promote or reinforce discrimination

[b] E/1992/23, annex III.

against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. . . .

. . .

8. . . .

(*d*) Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are taken duly into account. . . .

. . .

3. Global Strategy for Shelter to the Year 2000[c]

13. . . . all citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.

. . .

4. Recommendation A (Settlement policies and strategies) of the 1976 United Nations Conference on Human Settlements[d] (preamble)

3. The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes and their land, or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles [of the Conference] and the Universal Declaration of Human Rights.

. . .

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[c] Adopted by General Assembly resolution 43/181 of 20 December 1988. See *Official Records of the General Assembly, Forty-third Session, Supplement No. 8*, addendum A/43/8/Add.1).

[d] *Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976* (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. II.

5. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War[e]

Article 49

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

. . .

6. Protocol (II) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts[f]

Article 17. Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

7. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/29[g]

. . .

1. *Reaffirms* that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to security of the home, the right to security of tenure . . . and a variety of additional rights;

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[e] Adopted at Geneva on 12 August 1949 (United Nations, *Treaty Series*, vol. 75, p. 287.

[f] Adopted at Geneva on 8 June 1977 (ibid., vol. 1125, p. 609).

[g] Adopted on 24 August 1995.

2. *Strongly urges* Governments to undertake immediately measures, at all levels, aimed at rapidly eliminating the practice of forced eviction through, *inter alia*, immediately renouncing existing plans involving forced evictions, repealing legislation allowing forced evictions and ensuring the right to security of tenure to all citizens and other residents;

3. *Also strongly urges* Governments to confer legal security of tenure on all persons, in particular those currently threatened with forced eviction, and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

4. *Recommends* that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes, rights and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups, and recognizing the obligation to ensure such provision in the event of any forced eviction;

5. *Invites* all international financial, trade, development and other related institutions and agencies to take fully into account the views contained in the present resolution and other pronouncements under international human rights and humanitarian law on the practice of forced eviction;

6. *Requests* the High Commissioner for Human Rights to give due attention to the practice of forced eviction in discharging his responsibilities and to undertake measures, whenever possible, to persuade Governments to halt planned forced evictions . . . and to ensure the provision of adequate compensation when evictions have already occurred;

7. *Requests* the United Nations Conference on Human Settlements (Habitat II) to take fully into account the practice of forced eviction as a gross violation of human rights and to include in the final declaration and plan of action explicit references to the non-acceptability of this practice under international human rights law and concrete measures designed to prevent forced evictions;

8. *Requests* the United Nations Centre for Human Settlements (Habitat) in implementing its housing rights strategy (see HS/C/15/INF.7) to do everything within its power to prevent the practice of forced eviction by, *inter alia*, using the good offices of the Secretary-General to persuade Governments to refrain from carrying

out forced evictions and by compiling annual lists of all eviction cases brought to its attention;

. . .

8. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/39[h]

. . .

1. *Reaffirms* that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing;

. . .

9. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1993/41[i]

. . .

1. *Reaffirms* that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;

2. *Strongly urges* Governments to undertake all necessary immediate measures, at all levels, aimed at rapidly eliminating the practice of forced eviction;

. . .

5. *Invites* all international financial, trade, development and other related institutions and agencies to take fully into account the views contained in the present resolution, and pronouncements under international law on the practice of forced eviction;

. . .

[h] Adopted on 26 August 1994.

[i] Adopted on 26 August 1993.

10. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1993/36[j]

. . .

3. *Strongly encourages* all Governments to pursue effective policies and legislation aimed at creating conditions for ensuring the full realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed, and to take into account the particularly negative impact on housing and living conditions that may result from the adoption of economic adjustment and other policies based exclusively upon the dictates of the free market;

. . .

11. Commission on Human Settlements resolution 14/6[k]

3. *Urges* all States to cease any practices which could or do result in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere;

4. *Invites* all States to repeal, reform or amend any existing legislation, policies, programmes or projects which in any manner negatively affect the full realization of right to adequate housing;

5. *Encourages* all States to take steps, according to their available resources, with a view to achieving progressively the full realization of the right to adequate housing by appropriate means, including particularly the adoption of legislative measures;

6. *Urges* all States to comply with existing international agreements concerning the right to adequate housing, and to this end to establish, in accordance with the human settlements parts of international human rights law, appropriate monitoring mechanisms to provide, for national and international consideration, accurate data and indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure and other issues arising from the right to

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[j] Adopted on 25 August 1993.

[k] Adopted on 5 May 1993.

adequate housing and providing insights into policy, structural and other impediments to the efficient operation of the shelter sector;

. . .

12. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1992/26[l]

. . .

2. *Encourages* all States to pursue effective policies and legislation aimed at creating conditions aimed at ensuring the full realization of the right to adequate housing of the entire population, concentrating on those vulnerable groups that are homeless or inadequately housed;

. . .

13. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12[m]

. . .

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in the destruction of the lives and identities of people throughout the world, as well as increasing homelessness,

. . .

1. *Draws the attention* of the Commission on Human Rights to:

. . .

(*b*) The fact that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;

(*c*) The need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced eviction;

. . .

---

[l] Adopted on 27 August 1992.

[m] Adopted on 26 August 1991.

3. *Emphasizes* the importance of the provision of immediate, appropriate and sufficient compensation and/or alternative accommodation, consistent with the wishes and needs of persons and communities forcibly or arbitrarily evicted, following mutually satisfactory negotiations with the affected person(s) or group(s);

. . .

14. Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/26[n]

. . .

2. *Urges* all States to pursue effective policies and adopt legislation aimed at ensuring the realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed;

. . .

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[n] Adopted on 29 August 1991.

ANNEX III

Civil society and forced evictions

- Al-Haq (International Campaign to Halt Israeli Destruction of Palestinian Homes in the Occupied Territories), PO Box 1413, Ramallah, West Bank, via Israel
- Asian Coalition for Housing Rights, PO Box 24-74 Klongchan, Bangkapi, Bangkok 10240, Thailand
- Brazilian Movement in Defence of Life, Caixa Postal No. 64077, Copacabana, Rio de Janeiro-RJ, Brazil 22012-010
- Campaign for Bedsit Rights, 5-15 Cromer Street, London WC1H 8LS, England
- Casa y Ciudad, Calzada de Tlalpan 1025, Col. Americas Unidas, Mexico, D.F., Mexico
- Centre for Equality Rights in Accommodation (CERA), 517 College St., Suite 408, Toronto M6G 1A8, Canada
- Centre on Housing Rights and Evictions (COHRE), Postbus 15100, 3501 BC, Utrecht, Netherlands
- Comité de Refugiados de Guerra de El Chorillo, AP 820123, Zona 2, Panama City, Panama
- Committee on the Right to Housing (CRH): Coordination Centre, c/o Bandra East Community Centre, 341-A, Siddharth Colony, Bandra (E), Bombay 400 051, India
- COPADEBA/Ciudad Alternativa, Calle 14, #3 (altos), Ens Espaillat, Santo Domingo, Dominican Republic
- ENDA, rue Carnot 54, Dakar 3370, Senegal
- Fedevivienda, Avda. (Calle) 40, No. 15-69, AA 57059, Bogota, Colombia
- Food First International Action Network (FIAN), PO Box 102243, D-6900 Heidelberg, Germany

- Habitat et Participation, 1, place du Levant, 1348 Louvain-la-Neuve, Belgium
- Habitat International Coalition (HIC), Cordobanes No. 24, Col. San José Insurgentes, Mexico D.F. 03900, Mexico
- Housing Rights Center, 18-C Semira Apts, Juna Avenue, Matina, Davao City 8000, Philippines
- Housing Rights Unit (Lawyers for Human Rights), PO Box 5156, Johannesburg 2000, South Africa
- International Rivers Network, 1847 Berkeley Way, Berkeley, CA 94703, USA
- Mazingira Institute, PO Box 14564, Nairobi, Kenya
- Movimiento Comunal Nicaragüense, Hospital Velexz Paiz, 4 cuadras arriba Dpto. Belmonte, Managua, Nicaragua
- Multiple Action Research Group, 113-A, Near Asiad Village, New Delhi 110016, India
- Narmada Bachao Andolan, c/o "Parivartan" Nimbalkar Chambers, Dandia Bazar, Baroda 390 001, Gujarat, India
- National Coalition for Housing Rights (NCHR), Flat No. 117, Bldg. No. 8, 1st Floor, Dr. Baliga Nagar, Jasmine Mill Road, Mahim (East) Bombay 400 017, India
- Organization of Civic Rights (OCR), PO Box 4787, Durban 4000, South Africa
- Planact, PO Box 93540, Yeoville 2143, Johannesburg, South Africa
- Probe International, 225 Brunswick Ave., Toronto, Ont. M5S 25G, Canada
- Rooftops International, 2 Berkeley St., Suite 207, Toronto M5A 2W3, Canada
- SAARC Region Anti-Displacement Network, c/o YUVA, 8 Ground Floor (Mhatre Bldg.), 33L Mugbhat Cross Lane, Bombay 400 026, India

- Settlement Watch, 1747 Connecticut Ave, NW, Washington, DC 20009, USA
- Society for Community Organization (SOCO), 52 Princess Margaret Road, 3rd Floor, Kowloon, Hong Kong
- Unnayan, 36/1A Garcha Road, Calcutta 700 019, India
- Urban Poor Associates, 14-A Manhattan St., Cubao, Quezon City, Philippines
- Youth for Unity and Voluntary Action (YUVA), 8 Ground Floor (Mhatre Bldg.), 33L Mugbhat Cross Lane, Bombay 400 026, India
- Zimrights, PO Box 4111, Harare, Zimbabwe
- ZWOSAG/LUDC, PO Box 350136, Chilamga, Lusaka, Zambia

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